

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**THOMBERT, INC.**  
Jasper County, Iowa

ADMINISTRATIVE ORDER

NO. 2012-AQ-08

TO: Thombert, Inc.  
Walter W. Smith, Registered Agent  
316 E. 7<sup>th</sup> Street N.  
Newton, Iowa 50208

**I. SUMMARY**

This order requires you to maintain records in accordance with construction permit requirements, and to pay a penalty of \$7,351.00, subject to your appeal rights stated in this order.

Any questions regarding this order should be directed to:

**Relating to technical requirements:**

Bill Gross  
Iowa Department of Natural Resources  
Field Office No. 5  
401 SW 7th, Suite 1  
Des Moines, IA 50309  
Phone: 515/725-0268

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-6243

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative

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Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Thombert, Inc. has a plastic molding and fabrication facility in Newton, Iowa. Ovens are used for curing, spray booths are used for adhesive application and cleaning, and an incinerator is used for removal of polyurethane from metal wheels.

2. Bill Gross of DNR Field Office No. 5 inspected the Thombert Newton facility on December 18, 2009, and found that although usage and product content records appeared to be available, they were not organized in a manner that would allow for determination of plant-wide permit compliance. A January 11, 2010, Notice of Violation letter was sent to Thombert, stating that record-keeping improvements were needed at the facility.

3. Mr. Gross had previously inspected the Thombert Newton facility on September 15, 2008, and found that required records were not being maintained to confirm compliance with plant-wide permit limits. These records are required by air quality construction permits that have been issued to the facility by DNR. An October 2, 2008, Notice of Violation letter was sent to Thombert, requiring that the records be maintained, as required.

4. Thombert claims that immediately following Mr. Gross' September 15, 2008, inspection, Thombert made significant improvements to its recordkeeping process and assigned this responsibility to a different individual within the company. Thombert further claims that all the required air quality monitoring spreadsheets Thombert is required to maintain were updated at that time and were provided to Mr. Gross on September 23, 2008. Thombert claims that it has maintained all air quality monitoring records in a timely, complete and organized manner since September 15, 2008.

5. Mr. Gross again inspected the Thombert Newton facility on December 18, 2009. During that inspection, Mr. Gross was not able to review records that were up to date, understandable and complete. Thombert claims that confusion resulted when records were emailed between Thombert staff members and were not printed properly.

6. EPA Region VII conducted the most recent inspection of the facility in September 2011. The report noted that the facility's records were incomplete, and further stated that not all of the information was compiled, as required, to identify the rolling 12-month VOC and HAP totals on a monthly basis.

**History of Past Violations**

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1. Adhesive records have not been kept up to date previously, as required by air quality construction permits issued to the facility. This lack of appropriate recordkeeping is documented in inspection reports dated January 6, 1999; and October 17 and 18, 2001; and in Notice of Violation letters dated August 17, 1999; and November 19, 2001. Also, adhesive usage exceedences are documented in the records submitted after the November 11, 2001, Notice of Violation letter and subsequent January 24, 2002, Notice of Violation letter.

2. On July 29, 1999, Bill Gross of DNR Field Office No. 5 conducted a follow-up visit to the facility and found that records were not being maintained. An August 17, 1999, Notice of Violation letter was issued, requesting submittal of the required records by September 12, 1999. The records were not submitted.

3. On January 6, 2000, Bill Gross of DNR Field Office No. 5 inspected the Thombert facility and found that solvent and adhesive usage records were not available, as required. This finding was documented in a report with a cover letter dated January 12, 2000. The letter requested submittal of reports. The reports were not submitted.

4. On October 18 and 19, 2001, Bill Gross of DNR Field Office No. 5 inspected the facility in response to an odor complaint. The adhesive usage records were not being maintained, as required. A November 19, 2001, Notice of Violation letter was sent to Thombert.

5. A January 24, 2002, Notice of Violation letter was sent to Thombert because the adhesive usage records submitted on January 14, 2002, showed three violations in 2000 of permit usage limits for the DeVilbiss paint booth.

6. Thombert and its owner, Walter W. Smith, have specifically been informed of DNR's requirements in the past. In 1992, Administrative Order No. 92-AQ-35 was issued to ITWC, also owned by Mr. Smith, for installing equipment without construction permits. In 2002, Administrative Order No. 2002-AQ-34 was issued to Thombert for repeated violations of air quality construction permit provisions for recordkeeping and operating limits. The facility paid a \$2,500 penalty.

7. Following the issuance of these orders, Thombert continued to violate air quality permitting and recordkeeping requirements. During a 2003 inspection of the facility, DNR found that a new ventilation system was installed without a construction permit and an existing stack did not conform to permit specifications.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of

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air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134(3)(a), 567 IAC 22.1(1) requires that a person who constructs, installs, reconstructs or alters equipment or control equipment must first obtain an air quality construction permit from the DNR, unless an exemption applies.

3. Pursuant to Iowa Code section 455B.133, 567 IAC 22.3(3) authorizes permits to be issued subject to written conditions. The above facts indicate violations of air quality construction permits issued to Thombert.

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**V. ORDER**

THEREFORE, DNR orders Thombert to do the following:

1. In the future, maintain records in accordance with construction permit requirements; and
2. Within 45 days of the date of this order, pay a penalty of \$7,351.00.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$7,351.00 is assessed by this order. The penalty must be paid within 45 days of the issuance of this order. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Recordkeeping has not been adequately performed as required for a period of over six years since this issue was last addressed by DNR in

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an administrative order in 2002. The facility has avoided at least one hour of labor weekly during this period. It is estimated that the facility has saved at least \$351.00 by avoiding these costs. Therefore, \$351.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authority by the Iowa Code for that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined at this time that the most equitable and efficient means of resolving this matter is through the issuance of an administrative order. Since recordkeeping is the main proof of compliance with permit requirements for this facility, failure to follow recordkeeping requirements undermines the construction permitting and air quality compliance program for the State of Iowa. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Thombert has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's requirements. Thombert and its related facilities have a long history of air quality program non-compliance. Therefore, \$5,000.00 is assessed for this factor.

## VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

## VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 1st day of  
April, 2012.